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James C. Mahan
U.S. District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CV-S- JCM (PAL)

In re

LAS VEGAS MONORAIL
COMPANY, a Nevada non-profit
corporation,

          Debtor.

_____

AMBAC ASSURANCE
CORPORATION, et al.

          Appellants,

v.

LAS VEGAS MONORAIL
COMPANY, a Nevada non-profit
corporation,

          Appellee.

ORDER

Presently before the court is appellants Ambac Assurance Corporation and The Segregated

Account of Ambac Assurance Corporation's (hereinafter collectively "Ambac") emergency request

for certification for direct appeal to the Court of Appeals for the Ninth Circuit. (Doc. #26). Appellees

Las Vegas Monorail Company (hereinafter "LVMC") filed an opposition. (Doc. #39). Apellants filed

a reply in support of their motion. (Doc. #53).

Also before the court is Ambac's emergency motion for order shortening time to hear (I)

1 emergency motion for stay pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8005,

2 and (II) emergency request for certification for direct appeal to the Court of Appeals for the Ninth

3 Circuit. (Doc. #25). LVMC filed an opposition (doc. #37), and Ambac filed a response (doc. #50).

4 　　　　On April 26, 2010, the United States Bankruptcy Court for the District of Nevada entered an

5 order denying Ambac's motion to dismiss LVMC's chapter 11 case. Ambac filed a timely appeal

6 and a motion for leave to appeal. On May 12, 2010, Ambac filed its motion for stay pending appeal

7 with the bankruptcy court, which was denied a week later. On June 17, 2010, the appeal was

8 docketed with this court. In its appeal, Ambac asserts that the bankruptcy court abused its discretion

9 in denying the motion to stay.

10 　　　　On October 29, 2010, this court entered an order (doc. #61) denying Ambac's motion to treat

11 the appeal as a notice of appeal as of right under the collateral order doctrine, and denied Ambac's

12 motion for a stay. The court held that it was "not inclined to treat the order as final," as the appeal

13 did not meet the necessary criteria to be treated as an appeal of right.

14 　　　　In the present motion (doc. #26), Ambac is requesting certification for direct appeal to the

15 Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. § 158(d). Ambac asserts that the appeal

16 meets two subsections of section 158(d), namely that "(i) the judgment, order or decree involves a

17 question of law as to which there is no controlling decision of the court of appeals for the circuit or

18 of the Supreme Court of the United States or involves a matter of public importance;" and that "(iii)

19 an immediate appeal from the judgment, order, or decree may materially advance the progress of the

20 case or proceeding in which the appeal is taken..."

21 　　　　In light of the court's ruling (doc. #61) that the order was not final and thus not able to be

22 treated as an appeal as of right, Ambac's motion for certification for direct appeal is moot. Further,

23 with regards to Ambac's motion for order shortening time (doc. #25), as the court previously denied

24 the motion for stay (doc. #61) and held that the present motion for certification is moot, the present

25 motion for order shortening time (doc. #25) is also moot.

26 　　　　Accordingly,

27 　　　　IT IS HEREBY ORDERED ADJUDGED AND DECREED that appellants Ambac

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James C. Mahan
U.S. District Judge

1 Assurance Corporation and The Segregated Account of Ambac Assurance Corporation's emergency

2 request for certification for direct appeal to the Court of Appeals for the Ninth Circuit (doc. #26) be,

3 and the same hereby is, DENIED as moot.

4   IT IS FURTHER ORDERED that appellants Ambac Assurance Corporation and The

5 Segregated Account of Ambac Assurance Corporation's emergency motion for order shortening time

6 to hear (I) emergency motion for stay pending appeal pursuant to Federal Rule of Bankruptcy

7 Procedure 8005, and (II) emergency request for certification for direct appeal to the Court of Appeals

8 for the Ninth Circuit (doc. #25) be, and the same hereby is, DENIED as moot.

9   DATED January 31, 2011.

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11   **UNITED STATES DISTRICT JUDGE**

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James C. Mahan
U.S. District Judge

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